

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NO. UE-090205
)	
v.)	RESPONSE OF THE INDUSTRIAL
)	CUSTOMERS OF NORTHWEST
PACIFICORP d/b/a PACIFIC POWER &)	UTILITIES TO COMMISSION STAFF
LIGHT COMPANY,)	MOTION FOR PREHEARING
)	CONFERENCE
Respondent.)	
)	

I. Introduction

1 The Industrial Customers of Northwest Utilities (“ICNU”) submits this response to Staff’s motion for a prehearing conference (“Motion”). ICNU supports the relief sought by Staff, as ICNU also believes that a prehearing conference would be helpful in resolving any disagreements between the parties, and clarifying the principles that underlie settlement support. In this response, ICNU respectfully offers views about the form and content of reasonable stipulation testimony which could aid the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) in assessing a settlement.

II. Background

2 PacifiCorp filed a new general rate case on February 9, 2009. Following extensive process and earnest negotiation between all parties, a fair and thoroughly agreeable settlement was reached and a full stipulation was filed with the Commission on

August 25, 2009 (“Settlement Stipulation”). All parties continue to fully support the Settlement Stipulation. The only disagreement between the parties centers on the issue of what form the specific content of ICNU’s testimony in support of the Settlement Stipulation should take.

3 On September 9, 2009, Staff filed its Motion. In addition to seeking the ultimate relief of a prehearing conference, Staff explained why it believes ICNU is not abiding by the terms of the Settlement Stipulation. In short, Staff thinks that ICNU is not cooperating with other parties in the presentation of evidence to the WUTC, as all parties are required to do under the express provision of the Settlement Stipulation. Motion at 1, ¶ 2; Settlement Stipulation at 10, ¶ 32. Generally speaking, Staff does not believe the testimony ICNU proposes to file in support of the Settlement Stipulation is necessary. Id. at 2–3, ¶¶ 4, 5. In the discussion below, ICNU provides justifications for the form and content of its proposed testimony.

III. Discussion

4 ICNU believes that the filed Settlement Stipulation should be approved by the Commission, as it would be in the public interest for the WUTC to adopt it. ICNU is prepared to file testimony in support of the Settlement Stipulation, pursuant to the directive of WAC 480-07-740(2)(b). Under that paragraph, each party to a settlement agreement is required to offer presentment of one or more witnesses to testify in support of an agreement, and to answer questions concerning the details of that agreement.

5 ICNU’s goal is to provide a full record of process and negotiation for the Commission’s benefit. In addition, ICNU’s testimony provides details of the work

performed by its experts, their brief analysis and their support for the Stipulation. In furtherance of this goal, the testimony which ICNU is prepared to file concentrates on making the WUTC aware of:

- 1) Initial disagreements between the parties;
- 2) The process of analysis undertaken; and
- 3) Reasons why the Settlement Stipulation resolves the parties' concerns.

ICNU believes these are all reasonable matters that the Commission would appreciate being apprised of in reviewing the Settlement Stipulation and understanding that it represents a good compromise of the positions of the parties.

6 Concerning portions of ICNU testimony which may touch upon initial disagreements between the parties, the Commission's rules support the inclusion of such information. According to WAC 480-07-740(2)(a), documentation in support of a settlement "should include a narrative outlining the scope of the underlying dispute." The Commission understands that parties who have come to a settlement had various disputes when a filing was first made. By testifying to initial disputes, and contrasting initial disputes with the accord reached in the Settlement Stipulation, ICNU seeks to do nothing that is improper or unreasonable.

7 The provisions of the Settlement Stipulation are very important, and controlling on all the parties. Therefore, ICNU offered initial drafts of its supporting testimony to Staff and every other party, in compliance with the mutual agreement that each party would cooperate in developing a narrative and presenting supporting testimony. Settlement Stipulation at 10, ¶ 32. When some parties raised concerns about

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the content of ICNU's testimony, ICNU markedly revised its testimony drafts to address those concerns.

8 ICNU has spent a great deal of time and effort seeking to cooperate with the other parties. Unfortunately, Staff and the Company believe they should have the pen and be able to draft ICNU's testimony. ICNU's testimony was drafted by its experts and no other party should be able to draft testimony for ICNU's experts. They have reached their own independent conclusions and remain very supportive of the Stipulation.

9 Next, by describing the process of analysis ICNU undertook in this case, all supporting testimony in which ICNU is prepared to file should be of benefit to the WUTC. In its Motion, Staff referred to statements made by ALJ Dennis Moss a few months ago in the pending general rate of Puget Sound Energy. Motion at 2, ¶ 3 & n. 2. ALJ Moss provided a helpful explanation of the kind of information the Commission would want to hear in considering a rate case like the present one. Specifically, he noted that while the Commission does not need to know the exact results of an expert's analysis, it is helpful to know what analysis was performed and that a party duly considered such analysis in negotiations. WUTC v. PSE, Dockets UE-090704 and UG-090705 at Tr. 27:3–21 (June 22, 2009).

10 In its proposed testimony, ICNU has only attempted to provide the degree of specificity that ALJ Moss alluded to in the PSE case. ICNU's experts are prepared to testify to the types of analyses they undertook, and that the information obtained from those analyses were properly considered. None of the proposed supporting testimony is

focused upon the specific results of such expert analysis, however. ICNU believes that it is reasonably comporting with the Commission's preferences by doing so.

11 Finally, so far as the testimony proposed by ICNU finds issue with PacifiCorp's initial filing, such testimony does not detract from the central purpose of all the supporting testimony—i.e., an examination of the reasons why the Settlement Stipulation resolves the parties' original concerns. While the WUTC should thoughtfully consider the positions expressed by Staff in its Motion, and by ICNU in this response, the most important element should remain in focus: both Staff and ICNU, along with all other parties, fully support the Settlement Stipulation. Though not wholly unimportant, the present disagreement is more in the nature of form and comparatively insignificant content. By showing legitimate areas of disagreement, this demonstrates that the Stipulation is a legitimate compromise in the parties' positions. It is troubling that Staff does not believe that any areas of disagreement should be aired. ICNU believes its testimony is particularly important since settlement was reached before any other party field testimony in this docket.

IV. Conclusion

12 WHEREFORE, ICNU respectfully requests that the Commission convene a prehearing conference, as also requested by Staff, for the airing of all views pertaining to the current disagreement between the parties, so that a reasonable determination may be made in furtherance of settling this case, regarding the applicable standards in settlement support testimony.

Dated this 10th day of September, 2009.

Respectfully submitted,

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